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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,160

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Ulrich Deiss

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12/12/2008

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EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

12/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,160	<b>Applicant(s)</b> DEISS ET AL.	
	<b>Examiner</b> HANH V. TRAN	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 14, 18, 19, 22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-14, 18-19, 22, 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 11/20/2008 has been entered.

***Specification***

2. The disclosure is still objected to because of the following informalities: page 7, lines 12-15, it is still not clear how it is possible for the basket support plate 1 to be disengaged from the dishware basket 10 as disclosed. Applicant's remarks on page 5 of the above-noted amendment has been carefully reviewed. However, from applicant's explanation and the disclosure as a whole, it appears that the specification has mischaracterized that the catch hook 6 would cause "disengaging of the basket support plate 1 from the dishware basket". It appears that the disengagement of catch hook 6 would allow for vertical adjustment of the basket and the support plate relative to each other, but the support plate 1 is still in engagement with the basket by at least guide element 7; therefore, it should have been disengaging of the catch hook 6 from the basket strut in order to allow vertical adjustment of the basket support plate 1.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13-14, 18-19, 22 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 18 (1) lines 24-25, the limitation “means for biasing said adjustment lever...toward said basket support plate” is indefinite for failing to clearly the define the metes and bounds of the claimed invention; it is not clear what applicant is trying to claim here, (2) lines 34-40, it is not clear how it is possible that when actuation movement of the handle end (emphasis added) of said adjustment lever (which having the catch hook 6 arranged thereon) in the first direction moves in a direction toward the interior of the dishware basket, a guide element of the basket support plate being disengaged from the dishware basket to allow the basket to move from an upper position to a lower position; what about the catch hook 6? When the handle end moves toward the interior of the dishware basket, wouldn't the catch hook prevent movement of the basket from the upper position to the lower position? It appears that the “handle end” should be the “handle part”? Since claim 18 fails to clearly define the metes and bounds of the claimed invention, all above listed claims will be examined as best understood.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 13-14, 18-19, 22, and 24, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0848930 to Bertazzoni.

Bertazzoni discloses a device for adjusting the height position of a dishware basket comprising all the elements recited in the above listed claims, such as shown in Figs 1-2, including a basket support plate 1-2 adapted to be mounted on a side wall of the dishware basket, said basket support plate including rollers 4 mounted thereto and having a recess; an adjustment lever 3 pivotally mounted to the basket support plate such that a handle part of the adjustment lever may be pivoted toward and away from the basket support plate, said adjustment lever 3 including a handle end located in said recess formed in said basket support plate; means 3c for movably mounting the adjustment lever to the basket support plate for movement of the adjustment lever relative to the basket support plate in a first direction from the basket support plate toward the interior of the dishware basket and in a direction opposite to said first direction; a catch hook 3b arranged on said handle end of said adjustment lever 3 and located in said recess of said basket support plate so as to be oriented to the dishware basket interior when said basket support plate is mounted on a side wall of the dishware basket; and means 3c for biasing said adjustment lever to move in a direction opposite

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from the interior of the dishware basket toward said basket support plate, said biasing means 3c normally maintaining said handle end of said adjustment lever in a non-actuated disposition in which said catch hook extends into the path of movement of the dishwasher basket such that, when the dishware basket is moved from a lower height position into an upper height position, said catch hook on said handle end of said adjustment lever configured to automatically engage one of the horizontally extending basket struts of the dishwasher basket as the dishware basket completes its movement from the lower height position into the upper height position; and actuation movement of said handle part of said adjustment lever in a first direction from said basket support plate toward the interior of the dishware basket against the bias of said biasing means effects disengagement of a guide element of said basket support plate from the dishware basket, whereupon the dishware basket is free to move automatically under the action of gravity from the upper height position into the lower height position, wherein said biasing means includes a spring coupled to said adjustment lever, said spring biasing said adjustment lever to swivel back in said opposite direction after said handle part of said adjustment lever is actuated in said first direction, wherein said adjustment lever is pivotally mounted to said basket support plate near an upper edge of said basket support plate in said recess.

### ***Response to Arguments***

7. Applicant's arguments filed 11/20/2008 have been fully considered but they are not persuasive. In response to applicant's remarks on page 6 that "the recited 'guide elements' can be an element such as the catch hook 6, which, as described above,

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disengages from its engagement with a horizontal strut of the dishware basket upon inward movement of the adjustment lever”, the examiner respectfully takes the position that such can be the case; however, in this instant, the catch hook 6 is clearly defined within the body of the claim. However, should the “handle end” is amended as the “handle part”, such rejection would be obviated.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HANH V. TRAN whose telephone number is (571)272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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HVT  
December 8, 2008

/Hanh V. Tran/  
Primary Examiner, Art Unit 3637